



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 3, 1990

Honorable Karren S. Price
District Attorney
123rd Judicial District
Shelby & Panola Counties
101 San Augustine St.
Center, Texas 75935

LO-90-70

Dear Ms. Price:

Your letter to us presents the following facts:

The Sheriff of Shelby County has been authorized by the Commissioner's Court to have reserve deputies. He has an agreement with the Immigration and Naturalization Service whereby he houses federal prisoners in our local jail facility. In July, one of the federal prisoners fell ill and was hospitalized for several days, requiring a 24-hour per day guard. At that point, the Sheriff instructed the reserve sergeant to take care of that, meaning scheduling a guard for this particular prisoner for the period of his hospitalization. Shortly thereafter the Sheriff advised the reserve sergeant that the Sheriff's son and daughter-in-law were available for guard duty. Neither of these two individuals is a certified peace officer, or jailer; nor do either of them have any experience in law enforcement. He further insists that these two individuals be allowed to guard this prisoner at whatever time would best fit their (the son's and daughter-in-law's) schedule. As it turned out, the two of them amassed 200 hours of time, for which the reserve sergeant billed the INS, the INS then cut a check in payment of same to SHELBY COUNTY RESERVE DIVISION, at the Sheriff's Department address.

At that point, the Sheriff's son and daughter-in-law were issued checks drawn on the Shelby County Reserve Deputy's checking account. Those checks were signed by the reserve sergeant and the reserve captain.

Subsection (a) of section 1 of article 5996a, V.T.C.S., the nepotism statute, provides:


(a) No officer of this State nor any officer of any district, county, city, precinct, school district or other municipal subdivision of this State, nor any officer or member of any State district, county, city, school district, or other municipal board, or judge of any court, created by or under authority of any General or Special Law of this State, nor any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever.

Section 85.004 of the Local Government Code provides that a commissioners court "may authorize the sheriff to appoint reserve deputy sheriffs." You do not make clear whether the sheriff actually appointed his son and daughter-in-law as reserve deputies, but if he did so, section 85.004 requires that "at the time of appointment," they must file an oath and execute and file a bond in the amount of \$2,000."

Nethertheless, whatever the actual status of his son and daughter-in-law, it is clear that the sheriff, a county officer, appointed them to some "position . . . employment or duty" under the terms of section 1(a) of article 5996a. It is further apparent that both individuals are related to the sheriff within the prohibited degrees, the son within the first degree of consanguinity and the daughter-in-law within the first degree of affinity. See Attorney General Letter Advisory No. 67 (1973). In addition, since you

indicate that the appointees were "issued checks drawn on the Shelby County Reserve Deputy's checking account," it is evident that their compensation was "paid for . . . out of or from public funds." The sheriff does not avoid the nepotism statute by delegating hiring decisions to a deputy. Attorney General Opinion JM-1188 (1990).

Yours very truly,


Rick Gilpin
Chairman
Opinion Committee

RG/lcd

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